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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

APPLICANT(s): D. Salgado et al.

SERIAL NO.: 09/448,804

ART UNIT: 2177

FILING DATE: 11/24/99

EXAMINER: S.Pannala

TITLE: METHOD AND APPARATUS FOR MANAGING SOFTWARE
COPYRIGHT YEARS IN A MULTIPLE PLATFORM
ELECTRONIC REPROGRAPHICS SYSTEM

ATTORNEY

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ATTENTION: BOARD OF PATENT APPEALS AND INTERFERENCES

APPELLANTS' BRIEF
(37 C.F.R. §1.192)

This is an appeal in regard to the final rejection of the claims in the above-identified patent application. A Notice of Appeal was mailed to the USPTO on November 1, 2002. This brief is being filed in triplicate as required by 37 C.F.R. 1.192. Please charge deposit account 24-0037 for any fee for filing this brief, and any fee deficiency.

I. REAL PARTY IN INTEREST

The real party in interest in this Appeal is:

Xerox Corporation

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II. RELATED APPEALS AND INTERFERENCES

There are no directly related appeals or interferences regarding this application.

III. STATUS OF CLAIMS

Claims 1-14 are pending in the application. All of the pending claims, i.e. claims 1-14, have been finally rejected by the Examiner. The rejection of all pending claims is appealed. A copy of the rejected claims is attached hereto as the Appendix, i.e. IX APPENDIX-REJECTED CLAIMS.

IV. STATUS OF AMENDMENTS

Since the final rejection of July 30, 2002 and the amendment dated October 23, 2002, no further amendments have been filed in this application.

V. SUMMARY OF INVENTION

The present invention relates to a multiple platform architecture data reporting system and, more particularly, to automatic reporting and displaying of information.

A multiple platform architecture data reporting system for managing attribute data in accordance with the present invention comprises a system manager for collecting attribute data from multiple platforms; and a user interface connected to the system manager for displaying the collected attribute data to the user. A method for managing attribute data in a multiple platform architecture in accordance with the features of the present invention comprises the steps of polling at least two platforms

for attribute data; collecting the attribute data from the at least two platforms in response to the step of polling; and displaying the collected attribute data on a user display. A software copyright information managing system for managing software copyright data in a multiple platform electronic architecture in accordance with the features of the present invention comprises a system controller for collecting the software copyright data from multiple platforms; memory for storing the software copyright data collected by the system controller; and a user interface connected to the system controller for displaying the software copyright data from the memory to a user.

The copyright management system in accordance with the present invention is generally intended to be used for managing software copyright information and other software attribute data in a document processing apparatus such as a copier, a facsimile machine, a computer printer, a scanner, or some multifunction device. The copyright management system generally comprises a system manager, at least two platform controllers, a memory, and a user interface. The system manager generally comprises any suitable control module designated as the system manager. The system manager coordinates the system's platform-wide operations (such as power ON) and owns system level attributes. One attribute is the comprehensive copyright years list for all the platforms that comprise the system. The platform controllers generally comprise any suitable module designated as the platform manager. Each platform controller maintains a list of the software copyright years relevant to the software on its platform. Each platform controller passes the copyright information to the system manager at power ON or when initiated

by a user request from the system manager. Memory comprises any suitable data storage medium capable of storing information data, such as copyright years as reported by the platform controllers. Memory may be volatile or non-volatile. The user interface generally comprises a display for displaying copyright information and a user input device for providing instruction to the system manager. The user interface display may be any suitable medium such as a screen or hardcopy printout for displaying copyright information and any suitable user input device such as a keyboard.

VI. ISSUES

1. Are claims 1-3 and 6-14 anticipated by Teng et al. (U.S. Patent No. 6,094,679) under 35 USC 102(e).
2. Are claims 4 and 5 unpatentable over Teng et al. (U.S. Patent No. 6,094,679) in view of Menezes et al. (U.S. Patent No. 5,621,894) under 35 U.S.C. 103(a).

VII. GROUPING OF CLAIMS

The claims do not stand or fall together. The Groups are as follows:

- Group I- Claims 1-3 and 6-14
- Group II- Claims 4 and 5

In accordance with 37 C.F.R. 1.192(c)(7), an explanation of why the claims of the groups are believed to be separately patentable is contained in the argument section below.

VIII. ARGUMENT

A. Claims 1-3 and 6-14

Claim 1 specifically details a multiple platform architecture data reporting system for managing attribute data comprising a system manager for collecting attribute data from multiple platforms, and a user interface connected to the system manager for displaying the collected attribute data to a user. Claim 3 specifically details a method for managing attribute data in a multiple platform architecture comprising the steps of (i) polling at least two platforms for attribute data; (ii) collecting the attribute data from the at least two platforms in response to the step of polling; and (iii) displaying the collected attribute data on a user display. Last, but not least is claim 12 which details a software copyright information managing system for managing software copyright data in a multiple platform electronic architecture, comprising a system controller for collecting the software copyright data from multiple platforms; and a user interface connected to the system controller for displaying the software copyright data from the memory to a user. It is respectfully submitted that there are key and very critical differences between the Teng patent and appellants invention which can only lead to the conclusion that the Teng patent fails to disclose or even remotely suggest appellants invention whether the Teng patent is considered alone or in any combination with the Menezes patent. These critical differences include:

1. a controlling element (system manager) that coordinates the information gathering

2. coordinating information gathering across multiple platforms

3. consolidating gathered information into a single item for presentation.

The very plain and simple fact of the matter is that the Teng patent discloses a method of distributing software file that are resident on a network server to a network client. To effectuate the distribution, the network client issues an HTTP formatted request message to the network server which requests that certain software files resident on the network server be downloaded to the network client. The HTTP formatted request message may include information indicative of one or more of the operating system or processor architecture associated with the network client that the network server can use as an aide in determining which software files to return to the network client. The software files are bundled into a cabinet file by the network server and returned to the network client which, in turn, automatically unbundles the cabinet file, checks the authenticity of certain of the individual software files, and installs the software files in appropriate memory location associated with the network client. In this manner, a world wide distributed printing solution is provided that is capable of working transparently on intranets and the Internet. It is respectfully submitted that what is more than obvious is the fact that the Examiner has clearly overgeneralized with regard to that which the Teng patent actually teaches as compared to the actual disclosure of appellants invention. The Teng patent details point-and-print architecture for installing a printer driver. As the Teng patent clearly states, a client contacts a

server to install a printer driver located on the server. As part of this request, the client provides the server with some necessary information (e.g. its operating system). Based on this information, the server locates the files for the requested printer and returns it to the client. The client then installs the printer driver. Whereas the present invention instead details an accumulation of similar information (i.e., specifically copyright years) from multiple sources, consolidating the information into a single piece of information (e.g. a merged copyright list), and presenting the consolidation information to a user. This is simply not the subject matter that is taught by the Teng patent.

To support the rejection of claims 1-3 and 6-14 as being anticipated by the Teng et al. patent the Examiner has stated:

"Teng anticipated independent claims 1 and 12 by the following: "a system manager for collecting attribute data..." at Fig. 1, col. 6, line 52-55; "a user interface connected to the system..." at Fig. 1, col. 5, line 63-66."

The present invention details a "system manager that gathers information from multiple platforms (independent objects)" The Teng Patent has a network server, i.e. a piece of software that resides on a server and responds to the network requests. The network server does not coordinate the activities of a number of independent platforms. The network server does not gather attributes from independent platforms. As the Teng patent states, the network server finds the files pertaining to a specific printer driver. The Teng patent does mention a user interface. However, this user interface is not used to present attributes to a user. To refute appellants statement about the present invention detailing a system manager that gathers

information from multiple platforms, the Examiner uses the following to refute this claim: Col 6, lines 52-55 states "the network client then executes in step an installation application that functions to install the software files returned from the network server on the network client." It is confusing as to which element the Examiner is claiming to be equivalent to the system manager. The "network server" does not coordinate the process as it is responding to requests from the "network client" as Teng Col. 6, lines 47-51 clearly state. The network client is a "client application" that makes requests but does not coordinate any activity. The network client is not gathering any data, it is merely installing the software files returned by the network server.

The Examiner also stated:

"As per claims 2, 8, 13 and 14, "memory for storing attribute data...", Fig. 1, col. 5, line 25-40."

While the Teng patent does refer to memory for stored information, it should be noted that what the patent is referring to is the client's use of memory that contains what operating system it is.

The Examiner also stated:

"Teng also anticipated the independent claim 3 by the following: "polling at least two platforms..." at Fig. 5, col. 7, line 53-67 to col. 8, line 1; "collecting the attribute data..." at Fig. 5, col. 8, line 1-6; "displaying the collected attribute data..." at Fig. 6, Col. 8, line 32-35."

The Teng patent does not contain the concept of "polling at least two platforms". At the lines referred to by the Examiner, the Teng patent is referring to the acquiring of the network

client's specific "form" by getting it from the appropriate file. The specific file where this information resides varies from OS to OS. These lines from the Teng patent, detail the acquiring of the network client's specific "form". Col. 8 lines 32-34 of Teng does not have anything to do with displaying collected attribute data. Teng's patent is referring to finding in the client's initial request the specific printer being installed, and also finding the files for that printer's drivers.

The lines referenced by the Examiner (col. 7, line 53 to col. 8, line 1) do not discuss polling multiple platforms by any stretch of the imagination. These lines detail modifying a HTTP request message with the client's platform (i.e. operating system). In this context, the platform is the one the client resides on. As Teng, Col. 7, lines 63 through Col. 8, line 12 clearly states, the polling object (OLEPRN.DLL) exists on the client's platform and is acquiring information by polling other objects (e.g. the Registry) within the client's platform. There is one-and-only-one platform being discussed by Teng in the lines referenced.

The key difference to be noted between Teng and the present invention is that the Teng patent is referring to INTRA-platform activities and the present invention is referring to INTER-platform activities. There are many patents that exist that make use of collecting information within a single platform or application; the Teng patent is simply one example of this. However, this is not appellants invention.

Regarding claims 6 and 7, the Examiner stated referring to the Teng patent:

"As per claims 6 and 7, "the step of collecting copyright information..." at Fig. 5, col. 8, line 5-12."

The Teng patent is not collecting copyright information. In fact, the Teng patent has no mention of copyright data at all. The Teng patent clearly states in column 7, lines 54-62 that the information gathered is "the major version number of the operating system", "the minor version number of the operating system", and "processor architecture of the network client". Again note, this information is only about the network client's platform.

Finally, regarding the rejection of claims 9, 10 and 11 as being anticipated by the Teng et al. patent, the Examiner stated:

"As per claims 9, 10 and 11, "authentically displaying the attribute..." at Fig. 8, col. 9, line 49-67 to col. 10, line 1-28."

What is again very "obvious" is that the Teng patent does not mention displaying any attribute collected data. In the lines specified, it states "present the user with a visual presentation of the digital signatures of the issuing agency..." These lines are referring to the multiple contents of several software files.

Specifically referring to the Examiner's response to Appellants prior arguments as contained in the amendments filed by appellant, it is submitted that the Teng patent does not teach consolidating information into a single piece of information for presentation to the user. As Column 9, lines 55-65 of Teng clearly state, multiple software files (note the plural) are returned from the network server and "...present the user with a visual presentation of the digital signatures of the issuing

agency of all the executable software files..." (again: note the multiple plurals denoting that no consolidation of information is occurring. Each file's digital signature is presented regardless if it is equivalent to another file's signature).

In the Final Rejection, the Examiner states "Second, applicant states that the prior art Teng, does not gather attributes from independent platforms. Teng teaches that information from network server is obtained by the network client and installs it." Teng's patent only involves TWO platforms (network server and network client). The network client is only acquiring information (i.e. files) from ONE platform (the network server).

The Examiner goes on to state "Third, the applicant states that Teng does not teach polling..." The simple fact of the matter is that Teng does not teach polling of multiple platforms for attribute acquisition. Teng's patent has as an object that of polling within its own platform.

Generally speaking it clearly appears that the Examiner is keying on certain words (e.g. polling, platform) without looking at the context (i.e., the invention as a whole) by which these terms apply within the references. The purpose and methodology that Teng's patent uses polling and platform is much different than its uses stated in the present invention. Appellants purpose and methodology which is described in the specification is that which defines the scope and definition of the claim language.

It is respectfully submitted that the Examiner has erred in the rejection of Claims 1-3, and 6-14 under 35 U.S.C. 102(e) as being anticipated by Teng et al. (U.S. Patent No. 6,094,679) in

view of the rather clear fact that claims 1-3 and 6-14 are not "anticipated" by the Teng et al. patent as the word "anticipate" under 35 U.S.C. 102 has been defined by the courts!

The Examiner is reminded that: An invention which fails the test of §102 is said to be "anticipated". In order to anticipate an invention, the prior art revealed by the publication must "except for insubstantial differences, ***contain [] all of the same elements operating in the same fashion to perform an identical function." Popeil Bros., Inc. v. Schick Electric, Inc., 494 F.2d 162, 164, 181 USPQ 482, 483-484 (7th Cir. 1974)." (Emphasis Added)

In Colt Industries Operating Corporation v. Index-Wserke KG, Hahn & Tessky, 205 USPQ 990 (D.C. Dis. Of Col., 1979) there are two significant points stated on page 1001 regarding an anticipation:

1. There can be no anticipation under 35 U.S.C. §102 unless all of the same elements are found in exactly the same situation and united in the same way to perform identical functions in a single prior art reference. Schroder v. Ownes-Corning Fiberlgas Corp., 514 F.2d 901, 903-04, 185 USPQ 723, 724-726 (9th Cir. 1975).

2. To be an anticipation, a prior patent or publication must bear within its four corners adequate directions for practice of the patented invention. Congoleum Industries, Inc. v. Armstrong Cork Co., 339 F. Supp. 1036, 1052, 173 USPQ 147 (E.D. Pa. 1973), aff'd 510 F.2d 334, 184 USPQ 769 (3rd Cir. 1975).

And again in Paeco, Inc. v. Applied Moldings, Inc., 194 USPQ 353, 357 (3rd Cir. 1977) in discussing anticipation under 35 U.S.C. 102, the court stated:

"Anticipation occurs only when some single prior article, patent, or publication contained within its four corners every element of the claim in question; a patent is not anticipated when its elements are distributed among several prior publications or devices. See Line Material Co. v. Brady Elec. Mfg. Co., 7 F.2d 48, 50 (2d Cir. 1925); Philips Elec. and Pharmaceutical Industries Corp. v. Thermal and Elec. Industries. Inc. 450 F.2d 1164, 1169, 171 USPQ v641, 644-645 (3d Cir. 1971). Furthermore, in order to invalidate a patent on grounds of invalidity, the party asserting the invalidity bears a heavy burden of demonstrating it by clear and convincing proof. Aluminum Co. of America v. Amerola Product Corp., No. 76-1729, 194 USPQ 1, (3d Cir. Filed April 8, 1977); Tokyo Shibaura Electric Co. v. Zenith Radio Corp., No. 76-1237, 193 USPQ 73, (3d Cir., filed Jan. 7, 1977). For reasons which follow, we do not believe that AMI's proof on the issue of anticipation meets these exacting standards. (Emphasis added).

For all the reasons as stated above, Teng et al fails to anticipate the unique features of appellants invention as defined in claims 1-3 and 6-14. Therefore, the Examiners rejection of claims 1-3 and 6-14 based upon Teng et al., should be reversed.

B. Claims 4 and 5

Claim 4 is a dependent claim which depends on claim 3. Claim 3 defines a method for managing attribute data in a multiple

platform architecture, the method comprising the steps of: polling at least two platforms for attribute data; collecting the attribute data from the at least two platforms in response to the step of polling; and displaying the collected attribute data on a user display.

Dependent claim 4 adds to claim 3

wherein the step of polling at least two platforms for attribute data further comprises the step of automatically polling the at least two platforms during power on of at least one of the at least two platforms.

Dependent claim 5 adds to claim 3

wherein the step of polling at least two platforms for attribute data further comprises the step of polling at least one of the at least two platforms when polling is initiated by a user request.

Again the simple fact of the matter is that no such combination of method features as described in claim 4 or in claim 5 is taught or suggested by Teng et al. for all of the same reasons as stated above with regard to claims 1-3 and 6-14.

Regarding the rejection of claims 4 and 5 as being unpatentable over Teng et al. in view of Menezes et al. the Examiner stated:

"Teng does not teach explicitly polling other platform. However, Menezes teaches polling other computers/Fax machines. (Col. 17, line 55-67 to col. 20, line 23-39). Thus, it would have been obvious to one ordinarily skilled in the art at the time of the invention decide to use polling other platforms/devices in the network to collect

and consolidate the information in order to respond to the queried platform/device."

The Teng et al. patent by itself completely fails as a prior art reference against the claims of this application for much more than the reason of not teaching "explicitly polling other platform" as specifically outlined above. The Examiner is being extremely general in his expansion of what in fact is actually taught by the Teng et al. and Menezes et al. patents. It is respectfully submitted that the logic used by the Examiner in this rejection is silly because if one were to follow what the Examiner has concluded, then any prior art detailing a computer linked to a printer would cover all patents on how multiple computers networked to a printer can be done. But as the Examiner and the Board are both well aware, this is simply not true!

It is respectfully submitted that the Examiner is contradicting himself with his supporting statements in the 35 U.S.C. 103 rejection. Here the Examiner states that "Teng does not teach explicitly polling other platforms". Yet regarding the comments for claim 3 the Examiner states "Teng also anticipated the independent claim 3 by the following: "polling at least two platforms..." at Fig. 5, col 7, lines 53-67 to col. 8, line 1." The Examiner has refuted the Examiner's own earlier arguments.

It is respectfully submitted that the ultimate determination of obviousness is a question of law. See *In re Leuders*, 111 F. 3d 1569, 1571, 42USPQ2d 1481, 1482 (Fed. Cir. 1997). The factual predicates underlying an obviousness determination include the scope and content of the prior art, the differences between the prior art and the claimed invention, and the level of ordinary

skill in the art. See Monarch Knitting Mach. Corp. v. Sulzer Morat GmbH, 139 F.3d 877, 881, 45 USPQ2d 1977, 1981 (Fed. Cir. 1998).

To reject claims in an application under section 103, an Examiner must show an un rebutted prima facie case of obviousness. See In re Deuel, 51 F.3d 1552, 1557, 34 USPQ2d 1210, 1214 (Fed. Cir. 1995). In the absence of a proper prima facie case of obviousness, an applicant who complies with the other statutory requirements is entitled to a patent. See In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). It is respectfully submitted that the Examiner has simply not met the required legal standards for a valid rejection under 35 U.S.C. 103.

It is also respectfully submitted that the Examiner has simply not set forth the necessary factual evidence to support a proper rejection of the claims under 35 U.S.C. 103(a). As stated in In re Lee 61 USPQ2d 1430 @ page 1433:

[1] As applied to the determination of patentability vel non when the issue is obviousness, "it is fundamental that rejections under 35 U.S.C. §103 must be based on evidence comprehended by the language of that section." In re Grasselli, 713 F.2d 731, 739, 218 USPQ 769, 775 (Fed. Cir. 1983). The essential factual evidence on the issue of obviousness is set forth in Graham v. John Deere Co., 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966) and extensive ensuing precedent. The patent examination process centers on prior art and the analysis thereof. When patentability turns on the question of obviousness, the search for and analysis of the prior art includes evidence relevant to the finding of whether there is a teaching, motivation, or suggestion to select and combine the references relied on as evidence of obviousness. See, e.g., McGinley v. Franklin Sports, Inc. 262 F.3d 1339, 1351-52, 60 USPQ2d 1001, 1008 (Fed. Cir. 2001) ("the central question is

whether there is reason to combine [the] references," a question of the fact drawing on the Graham factors).

"The factual inquiry whether to combine references must be thorough and searching." *Id.* It must be based on objective evidence of record. This precedent has been reinforced in myriad decisions, and cannot be dispensed with. See, e.g., Brown & Williamson Tobacco Corp. v. Philip Morris Inc., 229 F.3d 1120, 1124-25, 56 USPQ2d, 1456, 1459 (Fed. Cir. 2000) ("a showing of a suggestion, teaching or motivation to combine the prior art references is an 'essential component of an obviousness holding'") (quoting C.R. Bard, Inc., v. M3 Systems, Inc., 157 F.3d 1340, 1352, 48 USPQ2d 1225, 1232 (Fed. Cir. 1998)); *In re Dembiczak*, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999).

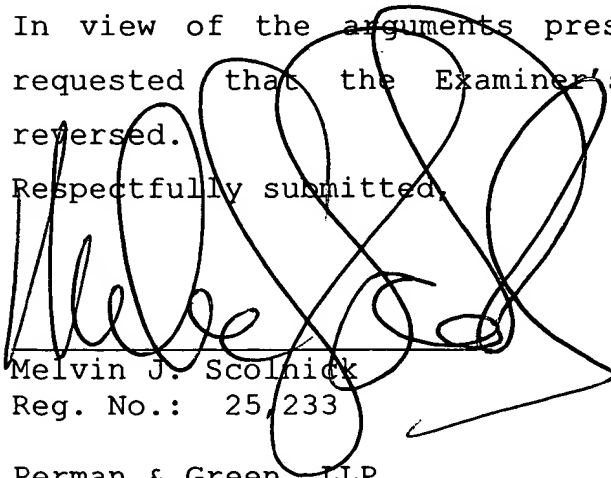
The Examiner has not met the necessary legal requirements for the type of evidence required for a valid rejection under 35 U.S.C. 103 (a). *In re Lee*, 61 USPQ2d 1430 (CAFC, 2002).

Therefore, the Examiners rejection of claims 4 and 5 based upon the Teng et al and Menezes et al. patents, should be reversed.

CONCLUSION

In view of the arguments presented above, it is respectfully requested that the Examiner's rejections of claim 1-14 be reversed.

Respectfully submitted,


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IX. APPENDIX OF CLAIMS

The texts of the claims involved in the appeal are as follows:

1. A multiple platform architecture data reporting system for managing attribute data, the system comprising:

a system manager for collecting attribute data from multiple platforms; and

a user interface connected to the system manager for displaying the collected attribute data to a user.

2. A multiple platform architecture data reporting system as in claim 1 wherein the system manager comprises memory for storing attribute data collected by the system manager.

3. A method for managing attribute data in a multiple platform architecture, the method comprising the steps of:

polling at least two platforms for attribute data;

collecting the attribute data from the at least two platforms in response to the step of polling; and

displaying the collected attribute data on a user display.

4. A method as in claim 3 wherein the step of polling at least two platforms for attribute data further comprises the step of

automatically polling the at least two platforms during power on of at least one of the at least two platforms.

5. A method as in claim 3 wherein the step of polling at least two platforms for attribute data further comprises the step of polling at least one of the at least two platforms when polling is initiated by a user request.

6. A method as in claim 3 wherein the step of collecting the attribute data from the at least two platforms in response to the step of polling further comprises the step of collecting the copyright information from the at least two platforms.

7. A method as in claim 3 wherein the step of collecting the attribute data from the at least two platforms in response to the step of polling further comprises the step of collecting the license information from the at least two platforms.

8. A method as in claim 3 wherein the step of collecting the attribute data from the at least two platforms in response to the step of polling further comprises the step of storing the attribute data in non-volatile memory.

9. A method as in claim 3 wherein the step of displaying the collected attribute data on a user display further comprises the step of automatically displaying the attribute data collected from the at least two platforms.

10. A method as in claim 3 wherein the step of displaying the collected attribute data on a user display further comprises the step of manually displaying the attribute data collected from the at least two platforms.

11. A method as in claim 3 wherein the step of displaying the collected attribute data on a user display further comprises the step of displaying only non-common attribute data collected from the at least two platforms.

12. A software copyright information managing system for managing software copyright data in a multiple platform electronic architecture, the system comprising:

a system controller for collecting the software copyright data from multiple platforms;

a user interface connected to the system controller for displaying the software copyright data from the memory to a user.

13. A software copyright information managing system as in claim 12 wherein the system controller for collecting the software copyright data from multiple platforms further comprises a memory for storing the software copyright data collected by the system controller.

14. A software copyright information managing system as in claim 13 wherein the memory for storing the software copyright data collected by the system controller further comprises non-volatile memory.